

CACFP Memorandum 2003-09

TO: CACFP Family Day Care Home Sponsors

FROM: Paul McElwain, Director
School and Community Nutrition

RE: Termination and Appeals Procedures for Day Care Homes

DATE: January 16, 2003

Public Law 106-224, the Agricultural Risk Protection Act of 2000 (ARPA) made a significant change to the procedures involved in terminating participation in the Child and Adult Care Food Program (CACFP) of a day care home. Specifically, section 243(c) of the ARPA added statutory language that gives day care homes, for the first time, the right to request an administrative review (hearing) of a termination of their Program participation when termination is “for cause”.

For day care homes, State agencies are now required to either: 1) establish a State-level review process; or 2) require sponsoring organizations (either individually or through a sponsor association) to establish an administrative review process. The State Agency has elected to require sponsoring organizations to establish an administrative review process for providers. That process, must at a minimum, be characterized by the following:

Providers may appeal any adverse action which affects their participation or ability to participate in the Program. Reasons for provider appeals or requests for hearings by providers include the following specific actions:

1. A denial of, or notice of intent to deny a provider’s application for renewal of participation in the Child and Adult Care Food Program;
2. Notice of intent to terminate the participation of a provider;
3. Suspension of a provider’s participation in the program;
4. A denial of all or a part of a provider’s Claim for Reimbursement;
5. Demand for the remittance of an overpayment; or
6. Any other action of the sponsor affecting the participation of a provider in the Program or the provider’s Claim for Reimbursement.

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Care must be taken to ensure that all three criteria listed below, in particular item #3, are followed. Additionally, for program deficiencies other than an imminent threat to the health and safety of children, or engaging in activities which threaten the public health or safety, the day care home must be given an opportunity to take corrective action before termination. The administrative review process must:

- a. Give notice to the provider, via certified mail, that the sponsoring organization intends to terminate the home's participation, as well as the reason(s) for the intended action;
- b. Give the provider and the sponsoring organization adequate time to submit documentation of their case to a review official; and
- c. Ensure that the administrative review official is an impartial and independent person not involved in the decision to terminate the home's participation.

Day care home provider appeals must be heard by independent and impartial hearing officials. For the purpose of compliance with this requirement, the following is defined:

7. INDEPENDENT means that in sponsoring organizations in which the CACFP is the sole activity, you must identify resources outside the organization to hear the appeal. EXAMPLE: Private Mediation Services, Professional Associations, etc. In organizations in which the CACFP is one of several activities, you may designate a staff person within the organization who is not involved in the CACFP to hear appeals.
8. IMPARTIAL means that no individual who may potentially be affected by an appeal decision may hear the appeal. EXAMPLE: Day care home providers may not hear appeals. An individual sponsor may not hear appeals on behalf of another individual sponsor.

If the day care home does not file a written request for review within the allotted time, a Notice of Termination and Disqualification must be sent to the provider, by certified mail, with a copy given to our office.

Program payments will continue for claims supported by appropriate records pending the outcome of the administrative review. A provider's Program payments may only be suspended when the sponsor determines there is an imminent threat to the health and safety of the children at the day care home, or because the day care home has engaged in activities which threaten the public health or safety. However, sponsors are reminded that they must not pay any claim or portion of a claim that the sponsor believes to be invalid.

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Finally, termination for convenience may not be used by a sponsoring organization in instances where the termination is actually for cause (i.e. is based on the provider's failure to comply with the terms of its agreement with the sponsoring organization).

Should you have questions regarding this policy, please contact Susanne Hubbard or Denise Hagan at 502/564-5625.

Attachments

(Sponsoring Organization Name)
Hearing Procedures
Family Day Care Homes

The following hearing procedures established in accordance with Section 226.16 and 226.18 of the Child and Adult Care Food Program regulations, as amended by Section 243(c)(5)(D) of Public Law 106-224, shall apply to any family day care home provider requesting a review of the Intent to Terminate Notice from participation in the Child and Adult Care Food Program. The grounds for termination include, but are not limited to the following:

- 1) Failure to meet the requirements of 7 CFR Part 226.18;
- 2) Submission of false claim information;
- 3) Failure to maintain adequate records, including, but not limited to:
 - i. Daily dated Menu and Production Records;
 - ii. Daily dated meal counts; and
 - iii. Daily dated attendance/sign-in sheets;
- 4) The claiming of meal payments for meals not served to participants;
- 5) Service of a significant number of meals which did not include required meal components or required quantities of all meal components;
- 6) Observation of no children in attendance after repeated unannounced visits; and
- 7) Failure to allow access to the home facility to conduct required monitoring and/or training and technical assistance.

A day care home provider desiring to appeal an adverse decision made by their sponsoring organization shall be informed of the appeals procedure upon enrolling in the Program and upon delivery of a Notification of Intent to Terminate. The following actions are reasons for provider appeals or requests for hearing by providers:

- 1) A denial or notice of intent to deny a provider's application for renewal of participation in the Child and Adult Care Food Program (CACFP);
- 2) Notice of intent to terminate the participation of a provider;
- 3) Suspension of a provider's participation in the Program;
- 4) A denial of all or a part of a provider's Claim for Reimbursement;
- 5) Demand for the remittance of an overpayment; or
- 6) Any other action of the sponsor affecting the participation of a provider in the Program or the provider's Claim for Reimbursement.

The family day care home provider shall be advised in writing of the grounds on which the sponsoring organization based the Notice of Intent to Terminate. The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the provider has the right to appeal the action.

A written request for review (appeal) shall be filed by the family day care home provider within 15 calendar days from the date the family day care home provider **received** the notice of action. If the family day care home provider wants an appeal hearing, the request for review must

include a request for a hearing. The family day care home provider may retain legal counsel or may be represented by another person. The sponsoring organization shall acknowledge the receipt of the request for appeal within 3 calendar days of receipt of the written appeal. The written request for review must be addressed to: *<insert the name and address of the appropriate agency official>*.

The family day care home provider may refute the charges contained in the notice of action in person at a hearing, if requested by the family day care home provider and/or by written documentation to the review official. In order to be considered, written documentation must be filed with the review official no later than 10 calendar days after the family day care home provider received the notice of action.

If requested by the family day care home provider, a hearing shall be held by the review official in addition to, or in lieu of, a review of written documentation submitted by the family day care home provider. The sponsoring organization shall inform the family day care home provider of the time and place of the hearing at least 5 calendar days prior to the hearing. The notice shall be sent by certified mail. Hearings must be scheduled so that there is not an undue hardship which would discourage a day care home from attending.

Failure of the family day care home provider's representative to appear at a scheduled hearing shall constitute the family day care home provider's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the sponsoring organization shall be allowed to attend the hearing to respond to the day care home's testimony, present evidence, and to answer questions posed by the review official.

The review official shall be an independent and impartial official who shall not be accountable to, or subject to, the influence of any person authorized to make decisions that are subject to appeal under the provisions of this section.

The review official shall make a determination within 3 calendar days of the hearing based on information provided by the sponsoring organization, family day care home provider, and state and federal policy governing the administration of the Program.

Within 30 calendar days of the sponsoring organization's receipt of the request for review, the review official shall inform the sponsoring organization, the family day care home provider, and the Kentucky Department of Education, School and Community Nutrition, of the outcome of the review.

Participating family day care homes may continue to operate under the Program during an appeal of termination and program payments must continue for claims supported by appropriate records pending the outcome of the administrative review. However, if the action is based on an imminent threat to the health or welfare of children or when the day care home's activities pose a threat to the public health or safety, the provider's participation and payments shall be suspended. If the institution or facility has been terminated for this reason, the sponsoring organization shall so specify in its notice of action.

Family day care homes electing to continue to participate in the Program while appealing termination may not be reimbursed for any meals served during the appeals process if the sponsor's actions are upheld. If the sponsor's decision is reversed, the day care home must be paid any reimbursement to which they are entitled within 30 days of notification of reversal.

If the sponsoring organization's decision is upheld, the effective date of termination is the date of the ruling issued by the review official.

The decision by the sponsoring organization review official is the final administrative determination to be afforded the family day care home provider.

Notification of Request for Appeal

Note: This form must be completed and returned to the sponsoring organization within 15 calendar days of receipt to preserve your right to appeal your sponsor's adverse decision.

Please print:

Provider Name _____

Provider Number _____

Provider Address _____

I hereby request that a hearing office review the following decision made by my sponsoring organization:

I will submit written documentation for review _____ Yes _____ No

I am requesting a hearing in person. _____ Yes _____ No

I will be represented by another person. _____ Yes _____ No

By signing this form, I certify that I have read and understand all the information that I am required to complete on this form. I also certify that I completed this form in my own writing, and that the answers provided are my express wishes.

Provider Signature

Date

+

For Sponsor Use Only

Notification Received from Provider on _____

Informed provider of hearing on _____

Hearing to be held on _____

Documentation submitted on _____

Final Determination _____

Provider notified of final determination on _____

Appeals Hearing Officer _____

Provider Appeal Documentation

Name of Provider _____

Date of Hearing _____ **Provider Number** _____

Type of Adverse Action:

Reason given by sponsor for action:

Hearing Officer

Printed Name

_____ **Uphold** _____ **Reverse**

Signature

Final Decision of the hearing officer:
